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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 IN RE: HIGH-TECH EMPLOYEE
18 ANTITRUST LITIGATION
19 THIS DOCUMENT RELATES TO:
20 ALL ACTIONS

Case No. 5:11-cv-2509-LHK

**PIXAR AND LUCASFILM'S JOINT
RESPONSE TO NON-SETTLING
DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

1 Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants Pixar and Lucasfilm Ltd.
 2 (“Lucasfilm”) hereby jointly move to seal portions of the Expert Report of Lauren Stiroh
 3 (“Stiroh Report”) (Dkt. No. 574), which was filed in connection with Non-Settling Defendants’
 4 Motion To Exclude the Expert Testimony of Edward E. Leamer, Ph.D. (“Leamer *Daubert*
 5 Motion”) (Dkt. No. 570). Lucasfilm also moves to seal portions of Exhibit 32 to the Declaration
 6 of Anne Selin (Dkt. No. 569) in support of Google’s Motion for Summary Judgment.

7 The information Pixar and Lucasfilm seek to seal has been designated Confidential
 8 and/or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt.
 9 No. 107). Pixar’s declaration of James M. Kennedy and Lucasfilm’s declaration of Rhonda
 10 Hjort in support of their sealing requests are being filed concurrently with this response.

11 **I. LEGAL STANDARD**

12 Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial
 13 court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or
 14 other confidential research, development, or commercial information.” Fed. R. Civ. P.
 15 26(c)(1)(G). The Ninth Circuit has “carved out an exception to the presumption of access to
 16 judicial records for a sealed discovery document [attached] to a nondispositive motion,” where
 17 the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos*
 18 & *Adler*, No. C-06 02231, 2007 WL 902550, at *6 (N.D. Cal. March 22, 2007) (citing
 19 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“[A]
 20 ‘particularized showing’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant
 21 preserving the secrecy of sealed discovery material attached to nondispositive motions.”); *see also Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2009) (“In light of the weaker
 22 public interest in nondispositive materials, we apply the ‘good cause’ standard when parties
 23 wish to keep them under seal.”).

25 By contrast, where the documents are submitted in connection with a dispositive motion,
 26 the Ninth Circuit has ruled that documents should be sealed when “compelling reasons” exist
 27 for protecting information from public disclosure. *Kamakana v. City & Cty. of Honolulu*, 447
 28 F.3d 1172, 1178-79 (9th Cir. 2006). Courts have found that “[o]ne factor that weighs in favor of

1 sealing documents [under the compelling reasons standard] is when the release of the document
 2 will cause competitive harm to a business.” *Apple v. Samsung*, 727 F.3d 1214, 1221-22 (Fed.
 3 Cir. 2013); *see also Nixon v. Warner Commc’n, Inc.*, 435 U.S. 589, 598 (1978) (“common-law
 4 right of inspection has bowed before the power of a court to insure that its records” are not used
 5 as “sources of business information that might harm a litigant’s competitive standing”).
 6 Moreover, the release of trade secrets constitutes “compelling reasons” sufficient to outweigh
 7 the public’s interest in disclosure. *Samsung*, 727 F.3d at 1221-22.

8 **II. GOOD CAUSE EXISTS TO SEAL PIXAR’S AND LUCASFILM’S
 9 CONFIDENTIAL INFORMATION SUBMITTED IN CONNECTION WITH THE
 10 NON-SETTLING DEFENDANTS’ LEAMER DAUBERT MOTION.**

11 Pixar and Lucasfilm seek to seal portions of the Stiroh Report, filed in connection with
 12 Non-Settling Defendants’ Leamer *Daubert* Motion: Pixar seeks to seal portions of lines 2 and 4
 13 of paragraph 77, and Lucasfilm portions of lines 9 and 10 of paragraph 71 of the Stiroh Report
 14 (Dkt. No. 574). These portions of the Stiroh report contain confidential and commercially
 15 sensitive information about employee compensation structure and benchmarking targets. Pixar
 16 and Lucasfilm designated the foregoing information “Confidential” and/or “Attorneys Eyes
 17 Only” under the Protective Order.

18 As Pixar’s and Lucasfilm’s supporting declarations demonstrate, Pixar and Lucasfilm
 19 kept the redacted information confidential, and the public disclosure of this information would
 20 cause Pixar and/or Lucasfilm harm by giving third-parties (including individuals responsible for
 21 competitive decision-making) insights into confidential and sensitive aspects of Pixar’s and/or
 22 Lucasfilm’s compensation strategies, benchmarking targets, and competitive positions, allowing
 23 these third-parties to potentially gain an unfair advantage in dealings with and against Pixar
 24 and/or Lucasfilm.

25 Compensation policies, practices and decisions are routinely subject to a sealing order.
 26 *In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. C 07-01841, 2008 WL 2397424, at
 27 *5 (N.D. Cal. June 10, 2008) (noting that a “compensation policy” was filed under seal); *Hertz*
 28 *Equip. Rental Co. v. Useda*, No. CV-10-4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010)

1 (granting a temporary restraining order to enjoin a former employee from using a company's
 2 "confidential and/or trade secret employee compensation information").

3 **III. COMPELLING REASONS EXIST TO SEAL LUCASFILM'S CONFIDENTIAL
 4 INFORMATION SUBMITTED IN SUPPORT OF DEFENDANT GOOGLE'S
 MOTION FOR SUMMARY JUDGMENT.**

5 Lucasfilm further seeks to seal portions of Exhibit 32 to the Selin Declaration (Dkt. No.
 6 569) filed in support of Google's Motion for Summary Judgment. The redacted portions of
 7 Exhibit 32 to the Selin Declaration contain highly confidential and commercially sensitive
 8 information about Lucasfilm's customers and other companies with which Lucasfilm's
 9 subsidiary, Industrial Light & Magic ("ILM") does business. Lucasfilm does not seek to seal
 10 portions of the document that discuss other defendants in the case or companies that are no
 11 longer in business. The disclosure of the specifics of ILM's relationship with its customers and
 12 other companies with which it does business to any other would harm those business
 13 relationships. The redacted portions also disclose ILM's recruiting and hiring practices.
 14 Lucasfilm designated the foregoing information "Confidential" under the Protective Order. As
 15 the concurrently filed Declaration of Rhonda Hjort demonstrates, Lucasfilm has kept the sealed
 16 information confidential, and the public disclosure of this information would cause Lucasfilm
 17 harm by giving third parties (including individuals responsible for competitive decision-making)
 18 insights into confidential and sensitive aspects of ILM's relationships with its customers and
 19 other companies with which ILM does business, and of ILM's recruiting and hiring practices,
 20 damaging ILM's relationships with those companies and allowing third parties to potentially
 21 gain an unfair advantage in competing with Lucasfilm.

22 This type of information is regularly sealed because disclosure could cause competitive
 23 harm. *See, e.g., Krieger v. Atheros Commc'ns, Inc.*, No. 11-CV-00640, 2011 U.S. Dist. LEXIS
 24 68033 at *3-4 (N.D. Cal. June 25, 2011) (sealing "sensitive and confidential information,
 25 including long-term financial projections, discussions of business strategy, and competitive
 26 analyses" under the compelling reasons standard); *Network Appliance, Inc. v. Sun Microsystems
 27 Inc.*, No. C-07-06053, 2010 U.S. Dist. LEXIS 21721, at *9 (N.D. Cal. Mar. 10, 2010) (sealing
 28 "internal information regarding [defendant's] business strategies and opportunities that were not

1 widely distributed"); *see also TriQuint Semiconductor, Inc. v. Avago Techns. Ltd.*, No. CV 09-
 2 531, 2011 U.S. Dist. LEXIS 143942, at *9 (D. Ariz. Dec. 13, 2011) (granting motion to seal
 3 "market analysis information," under compelling reasons standard, including business strategy
 4 documents, such as information relating to "product competitiveness, and market and
 5 technological opportunities and risks").

6 **IV. CONCLUSION**

7 For the foregoing reasons, Pixar and Lucasfilm respectfully request that this Court order
 8 the requested portions of the Stiroh Report to be placed under seal. Lucasfilm further
 9 respectfully requests that this Court order the requested portions of Exhibit 32 to the Selin
 10 Declaration in Support of Google's Motion for Summary Judgment to be placed under seal.

11 A proposed order is attached. A copy of Exhibit 32 to the Selin Declaration showing
 12 Lucasfilm's proposed redactions highlighted in yellow will also be lodged with the Clerk.

14 Dated: January 13, 2014

COVINGTON & BURLING LLP

16 By: /s/ Emily Johnson Henn

17 *Attorneys for Defendants PIXAR and
 18 LUCASFILM LTD.*